

United States 1095
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed

APR 21 1917

F. D. Monckton,
Clerk.

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Cor-
poration, and EVERETT IMPROVEMENT
COMPANY, a Corporation,

Defendants.

Names and Addresses of Counsel.

CLAY ALLEN, Esq., United States Attorney,
Attorney for Plaintiff in Error,
Room 310 Federal Building, Seattle, Wash-
ington.

WINTER S. MARTIN, Esq., Assistant United
States Attorney, Attorney for Plaintiff in Error,
Room 310 Federal Building, Seattle, Wash-
ington.

J. A. COLEMAN, Esq., Attorney for Defendants in
Error,
Everett, Washington. [1*]

*Page-number appearing at foot of page of original certified Transcript
of Record.

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation,
and EVERETT IMPROVEMENT
COMPANY, a Corporation,

Defendants.

Complaint.

Comes now the plaintiff by C. F. Riddell, United States Attorney, and E. B. Brockway, Assistant United States Attorney, for the Western District of Washington, and for a cause of action against the defendants and each of them respectfully shows to the court:

I.

That the plaintiff herein is the United States of America; that the defendant, Snohomish River Boom Company, is a corporation, duly organized and doing business under the laws of the State of Washington, and that the defendant, Everett Improvement Company, is a corporation, duly organized and doing business under the laws of the State of Washington.

II.

This is an action brought by the United States of America to secure the possession from the defend-

ants, and each of them, of certain property hereinafter more particularly described, situated in Snohomish County, Washington, and within the Northern Division of the Western District of Washington, and to recover for the use and possession of such property by the defendants. [2]

III.

That on or about December 23, 1873, U. S. Grant, the then President of the United States, acting in accordance with the treaty with the Dwamish and other tribes of Indians, of January 22, 1855, and in accordance with the authority in him vested, set apart as an Indian reservation by executive order, the following described property, being at that time a portion of the public domain of the United States of America, to wit,

Beginning at low-water mark on the north shore of Steamboat Slough at a point where the section line between sections 32 and 33 of township 30 north, range 5 east intersects the same; thence north on the line between sections 32 and 33, 28 and 29, 20 and 21, 16 and 17, 8 and 9, and 4 and 5, to the township line between townships 30 and 31; thence west on said township line to low-water mark on the shore of Port Susan; thence southeasterly with the line of low water mark along said shore and the shores of Tulalip Bay and Port Gardner, with all the meanders thereof, and across the mouth of Ebey's Slough to the place of beginning.

IV.

That in accordance with the terms of said treaty,

the title to all of said property, except such as has been severally patented to individualy Indians, has been and now remains in the United States of America in trust for those Indians, for whose benefit it was so set aside as provided in said treaties.

V.

That a portion of the southeast boundary of said reservation, to wit, a portion of a line drawn from the point where the township line between townships 30 and 31 intersects the low-water mark on the shore of Port Susan. [3] and running thence "southeasterly with the line of low-water mark along said shore and the shores of Tulalip Bay and Port Gardner with all the meanders thereof, and across the mouth of Ebey's Slough to the place of beginning," was and is a line running easterly from the southern most point of lot four (4) of section one (1), township twenty-nine (29) north, range four (4) east, W. M., to the point on the low-water mark of Steamboat Slough, where the section line between sections thirty-two (32) and thirty-three (33) of township thirty (30) north, range five (5) east, W. M., intersects said low-water mark, said last mentioned point being the place of beginning for said reservation as aforesaid; that said line so last described as a part of the southeastern boundary of said reservation is and at all times herein mentioned was that portion of said southeastern boundary which crosses the mouth of Ebey's Slough according to the calls in said executive order so setting apart said reservation,

VI.

That lying in the mouth of Ebey Slough and im-

mediately north of said line last described as being that portion of the southeastern boundary of said reservation which crosses the mouth of Ebey Slough, there has grown up since the date of said executive order certain tide and mud and sand flats, which are thus within said reservation, and have never been patented to any individual or corporation, and the title to which is in the United States of America in trust for said Indians as aforesaid, and free of all other claims, titles or interests whatsoever. [4]

VII.

That the defendants, Snohomish River Boom Company, a corporation, and Everett Improvement Company, a corporation, claim to have some right, title or interest in and to said mud, tide or sand flats, referred to in the last preceding paragraph, adverse and hostile to the United States of America, and the nature of which is to plaintiff unknown, but which plaintiff alleges to be of no force and effect and invalid as opposed to the claims of plaintiff.

VIII.

That on or about September 13, 1911, the defendant, Snohomish River Boom Company, as an alleged tenant of the defendant, Everett Improvement Company, which last named defendant had itself no right, title or interest therein, and not acting under any authority from the United States of America, went into possession of a portion of such tide land or mud bar so lying in the mouth of Ebey Slough and in said reservation and north of said portion of said southeasterly boundary thereof, and has so continued, and is still in said possession, and each of said defendants

refuses to give up said possession to plaintiff, or to recognize the right of plaintiff therein.

IX.

That the portion of said tide lands or mud flats in the mouth of Ebey Slough, and north and the southeastern boundary of said reservation, and within said reservation, possession of which is so adversely held by defendants, is an irregular shaped tract of the general form of a triangle, having its southerly base commencing about one-half mile east, about fifteen (15) degrees north of the southern most [5] point of lot four (4), section one (1), township twenty-nine (29) north, range four (4) east, and running thence north, about 80 degrees east a distance of about 7,736 feet; the westerly leg of said triangle being an irregular line extending about 1,000 feet westerly of its southern beginning point and ending at a point about 900 feet east and about 2,250 feet north of said southerly beginning point; that a more exact description of said tract is to plaintiff unknown, but that all of said tract lies north of said southeastern boundary of said reservation and within said reservation, and has never been patented to any individual or corporation; that the reasonable rental value of said tract is five hundred dollars (\$500.00) per year.

WHEREFORE plaintiff prays for a judgment against the defendants, and each of them, that as holder of the legal title thereof it be placed in the immediate possession of said real estate so lying north of the southeastern boundary of said reservation, and now in the adverse possession of the said

defendants, and for judgment in the sum of one thousand dollars (\$1,000.00) against the defendants, and each of them, and for its costs and disbursements herein.

C. F. RIDDELL,
United States Attorney.

E. B. BROCKWAY,
Assistant United States Attorney.

United States of America,
Western District of Washington,—ss.

E. B. Brockway, being first duly sworn, on oath deposes and says:

I am Assistant United States Attorney and make this verification in that capacity; I have read the foregoing complaint, know the contents thereof, and believe the same to be true.

E. B. BROCKWAY. [6]

Subscribed and sworn to before me this 3d day of May, 1913.

[Seal]

E. M. LAKIN.

[Endorsed]: Complaint. Filed in the U. S. District Court, Western Dist. of Washington. May 3, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [7]

UNITED STATES OF AMERICA.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Cor-
poration, and EVERETT IMPROVEMENT
COMPANY, a Corporaton,

Defendants.

Summons.

The President of the United States of America,
Greeting: To the Above-named Defendants,
Snohomish River Boom Company, a Corpora-
tion, and Everett Improvement Company, a Cor-
poration.

You are hereby required to appear in the United States District Court, in and for the Western District of Washington, Northern Division, within twenty days after the day of service of this summons upon you, exclusive of the day of service, and answer the complaint of the above-named plaintiff, now on file in the office of the Clerk of said Court, in the City of Seattle, a copy of which complaint is herewith delivered to you; and unless you so appear and answer, the plaintiff will apply to the Court for the relief demanded in said complaint.

WITNESS, the Hon. EDWARD E. CUSHMAN,
Judge of said Court, this 3d day of May, in the year
of our Lord one thousand nine hundred and thirteen
and of our independence the one hundred and thirty-
seventh.

[Seal]

FRANK L. CROSBY,
Clerk.

By Ed M. Lakin,
Deputy Clerk. [8]

Return on Service of Writ.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the an-
nexed Summons together with the complaint on the
therein named Snohomish River Boom Company, by
handing to and leaving a true and correct copy
thereof with W. L. McCormick, vice-president of the
said Snohomish River Boom Company, personally,
at Tacoma, in said District, on the 15th day of May,
A. D. 1913.

JOSEPH R. H. JACOBY,
U. S. Marshal.

By Fred M. Lathe,
Deputy.

Return on Service of Writ.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the
within Summons, together with copy of complaint,
on the therein named Everett Improvement Com-
pany, by handing to and leaving a true and correct

copy thereof with E. C. Mony, secretary of the within named Everett Improvement Company, personally, at Everett, in said District, on the 12th day of May, A. D. 1913.

JOSEPH R. H. JACOBY,
U. S. Marshal.
By Fred M. Lathe,
Deputy.

Marshal's fees: \$3.98.

[Endorsed]: Summons. Filed in the U. S. District Court, Western District of Washington. May 16, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy. [9]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,
Defendants.

Answer.

The defendants answer the complaint as follows:

I.

They and each of them deny each and every allegation contained in paragraphs V and VI of said complaint.

II.

Answering paragraph VII of the complaint, they and each of them deny that they or either of them claim any right, title or interest in or to any of the land or property described in paragraph III of the complaint, but they admit that they do claim and assert that they do have some right, title and interest in and to the property lying north of the alleged boundary described in paragraph V of the complaint, which property is more particularly described in paragraph IX of said complaint.

III.

The defendants admit that on or about September 13, 1911, the defendant, Snohomish River Boom Company, as a tenant of the defendant, Everett Improvement Company, went into possession, and has continued and still is in possession of the property described in paragraph IX of the complaint; but these defendants deny each and every other allegation contained in paragraph VIII of said complaint, and they assert that the property of which they are in [10] possession, and which they claim to own is not included and described in paragraph III of the complaint, and the defendants, and each of them, deny that the tide-lands or mud flats undertaken to be described in paragraph IX of said complaint are in the mouth of Ebey Slough, or that they are north of the southeastern boundary of the Indian Reservation referred to in the complaint, and deny that they are within the boundaries of said Indian Reservation; but admit that they are north of the southeastern boundary of said reservation, as the same is al-

leged to be in paragraph V of said complaint, and they deny each and every other allegation contained in paragraph IX of said complaint.

IV.

The defendants and each of them aver that the southeastern boundary of said reservation is not as the same is alleged to be in paragraph V of said complaint, but that that portion of said southeastern boundary of said reservation was and is a line running southeasterly from the most easterly point of lot five (5), section thirty-one (31), township thirty (30) north of range five (5) east, southeasterly across the mouth of Ebey Slough to the point on the low-water mark of Steamboat Slough, where the section line between sections thirty-two (32) and thirty-three (33) of township thirty (30), north of range five (5) east, W. M., intersects said low-water mark.

And for a further and affirmative defense, these defendants allege: [11]

I.

That at the time of the admission of the State of Washington into the Union, the tide lands, mud flats and property involved in this litigation were situated under the tide waters and within the limits of said State, and thereupon became the property of said State, and that on the 4th day of February, 1893, the said State of Washington, for a valuable consideration, and pursuant to the laws of said State, granted and conveyed to the Everett Land Company, a corporation, the following described tide lands, situated in Snohomish County, State of Washington, to wit,

Beginning at the meander corner common to fractional sections 5 and 6 on south side of Smith's Island in township 29, north of range 5 east of the Willamette Meridian; thence following the Government meander line south 54 deg. east, 231 feet; thence south 63 deg. east, 976.8 feet to meander corner common to fractional sections 5 and 8 in said township and range; thence south 78 deg. east, 462 feet; thence south 88 deg. east, 594 feet; thence south 70 deg. east, 462 feet; thence south 76 deg. east, 541.2 feet; thence south 74 deg. east, 462 feet; thence south 63 deg. east, 726 feet; thence south 80 deg. east, 627 feet; thence south 25 deg. east, 1181.4 feet to meander corner common to fractional sections 8 and 9 in township and range aforesaid; and thence leaving Government meander line, south 0 deg. 30' west, 100 feet; thence north 53 deg. 50' west, 2660 feet; thence north 74 deg. 47' west, 1076.4 feet; thence south 83 deg. west, 2130. 5 feet; thence north 71 deg. 22' west, 6550 feet; thence north 51 deg. 16' east, 2089 feet; thence north 4 deg. 11' east, 1142 feet; thence north 20 deg. 31' west, 1170 feet; thence north 51 deg. 45' east, 994 feet; thence south 69 deg. 28' east, 4990 feet; thence north 83 deg. 03' east, 3105 feet; thence south 64 deg. 20' east, 1827 feet; thence south 0 deg. 40' east, 290 feet to meander corner common to fractional sections 4 and 5 in township and range aforesaid; thence following the Government meander line north 65 deg. west, 356.4 feet; thence north 68 deg. west, 363 feet;

thence north 70 deg. west, 303.6 feet; thence north 76 deg. west, 330 feet; thence north 83 deg. west, 204.6 feet; thence north 81 deg. west, 240.9 feet; thence south 88 deg. west, 627 feet; thence south 78 deg. west, 627 feet; thence south 79 deg. west, 297 feet; thence south 73 deg. west, 594 feet; thence south 85 deg. west, 442.2 feet; thence south 76 deg. west, 297 feet; thence south 66 deg. west, 838.2 feet to meander corner common to fractional sections 5 and 6 in township and range aforesaid on north side of Smith's Island; thence south 62 deg. west, 594 feet; thence south 61 deg. west, 396 feet; thence south 28 deg. west, 429 feet; thence south 15 deg. east, 429 feet; thence south, 30 deg. east, 726 feet; thence south 58 deg. east, 699.6 feet to point of beginning, containing 626.4 acres; [12]

—that included in the description last aforesaid are the tide lands and mud flats sought to be recovered by the plaintiff in this action.

II.

That the defendant, Everett Improvement Company, by several mesne conveyances, from the said Everett Land Company, became and now is the absolute owner of the property described in the last preceding paragraph, and that it has leased a portion of said lands to the defendant, the Snohomish River Boom Company.

Wherefore, these defendants pray that the plaintiff take nothing by this action, but that the defendant, Everett Improvement Company, have its title to the land involved in this litigation, quieted as

against any claim of the plaintiff, and that these defendants have and recover of and from the plaintiff herein, their costs and disbursements incurred in this action.

FRANCIS H. BROWNELL,
J. A. COLEMAN,
Attorneys for Defendants.

State of Washington,
County of Snohomish,—ss.

E. C. Mony, being first duly sworn on his oath, says: That he is the Secretary of the defendant, Everett Improvement Company, a corporation; that he makes this verification for and on behalf of said defendant; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

[Seal]

EDWARD C. MONY.

Subscribed and sworn to before me this 28th day of May, 1913.

J. M. HOGAN,
Notary Public in and for the State of Washington,
Residing at Everett. [13]

Copy of the within answer received, and due service thereof acknowledged, this 29th day of May, 1913.

C. F. RIDDELL,
U. S. Attorney.
E. B. BROCKWAY,
Asst. U. S. Atty.

[Endorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington. May 29, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [14]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

SNOHOMISH RIVER BOOM COMPANY, a Corpo-
ration, and EVERETT IMPROVEMENT
COMPANY, a Corporation,
Defendants.

Memorandum Decision.

Filed May 10, 1916.

ON MOTION TO DISMISS—MOTION GRANTED.

CLAY ALLEN, U. S. Attorney, WINTER S. MAR-
TIN, Asst. U. S. Attorney, for Government.

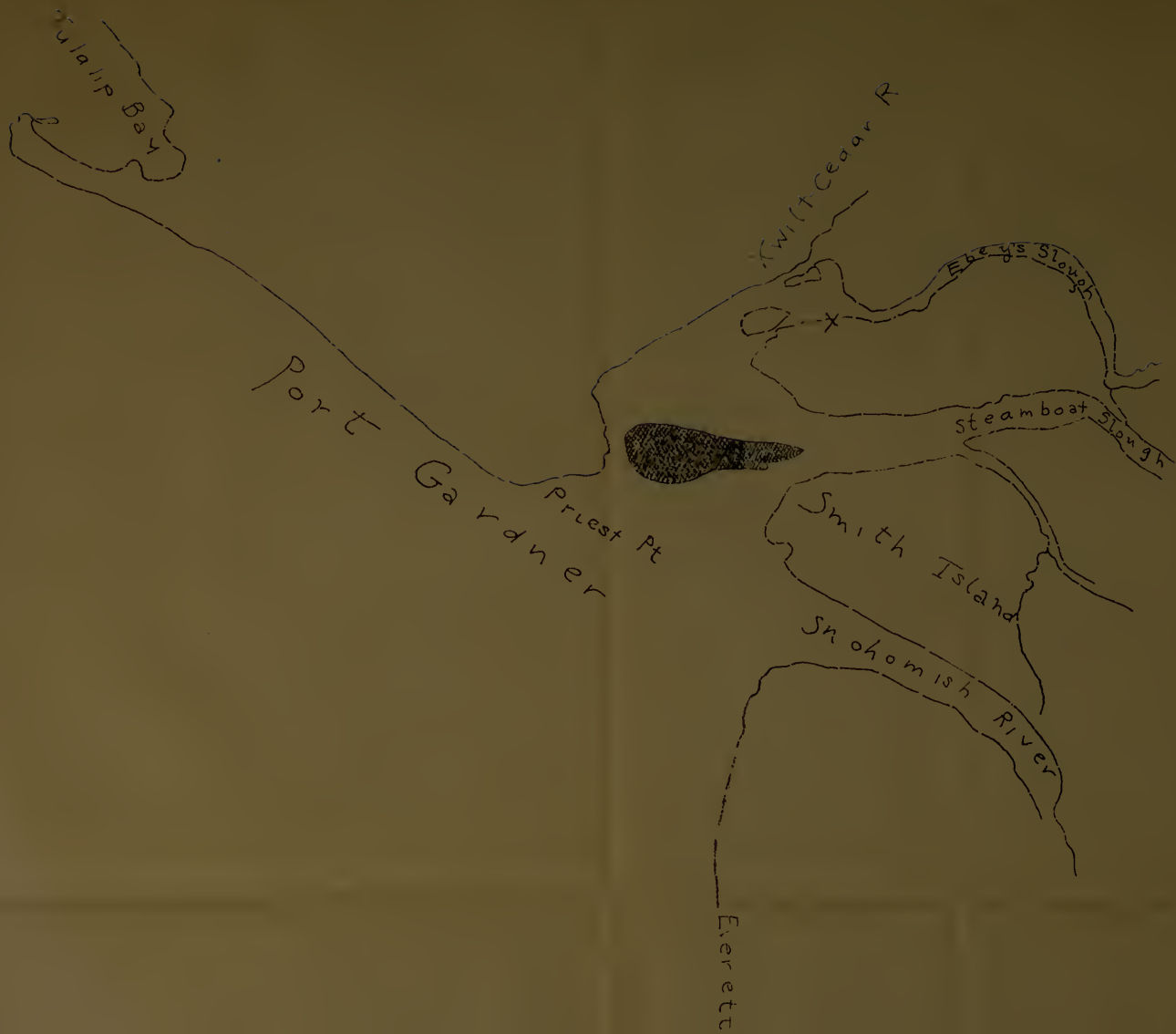
J. A. COLEMAN, FRANCIS H. BROWNELL, of
Everett, Wash., for Defendants.

NETERER District Judge:

The United States seeks to recover from the defendants the possession of certain tide-lands situated at Port Gardner, Snohomish County, Washington. The land was sold by the State of Washington to the Everett Improvement Company as tide-lands, and was by the Improvement Company leased to the Boom Company. The issue involves the construction of executive order of December 23, 1873, and the Indian treaty of 1855. Section 2 of the treaty provides, among other things, "that the amount of two sections of 1280 acres, on the north side of Hwohwhomish and the crick emptying into the same called the

Kwilt-Cedar, the peninsula at the southeastern end of Perry Island * * * all of which tract shall be set apart and so far as necessary surveyed and marked out for their exclusive use * * * ,” and further that [15] “there is also reserved throughout the lands hereby ceded the amount of thirty-six sections of one township of land on the northeastern shore of Port Gardner and north of the mouth of Snohomish River, including Tulalip Bay and the before-mentioned Kwilt-Cedar crick * * * ,” and Article 4, “The said tribes and bands agree to remove to and settle upon the said first above-mentioned reservations within one year after the ratification of this treaty, or sooner, if the means are furnished them * * * .” Article 5, “The right of taking fish at usual and accustomed grounds and stations is further secured to the Indians * * * .”

President Grant, December 23, 1873, by executive order, fixed the boundaries of the Tulalip Indian Reservation pursuant to the treaty, as follows: “Beginning at low water mark on the north shore of Steamboat Slough at a point where the section line between sections thirty-two and thirty-three of township twenty north, range five east, intersects the same; thence north * * * thence west * * * to low-water mark on the shore of Port Susan; thence southeasterly with the line of low-water mark along said shore to the shores of Tulalip Bay and Port Gardner with all the meanderings thereof, and across the mouth of Ebey’s Slough to the place of beginning. The following sketch exhibits the land:



It is contended by the plaintiff that the meander line along the shore should extend from the most southerly point of the reservation (Priest Point) across the channel to Steamboat Slough, which would include the wedge-shaped tide-lands colored black on the sketch; whereas, the defendants contend that the boundary follows low-water mark along the channel to the mouth of Ebey's Slough, which, it is contended, is above the lands in question, and thence to the point of beginning. At the conclusion of the evidence defendant moved to dismiss.

According to the meander notes U. S. Government, the mouth of Ebey's Slough is practically at X indicated upon the sketch. The testimony shows that the land in question is a part of the tide-lands which extend from and adhere to Smith Island; that these lands are separated by a deep-water channel on the west and north and are independent of the reservation; that Steamboat Slough, which is navigable, is north of the land, and the water of Port Gardner is west and form a navigable channel between the reservation and the land in question entering into Ebey's Slough. I think it must be apparent from an examination of the treaty and likewise of the executive order, that the purpose was to grant to the Indians tillable land with such accretions as would naturally belong thereto. I do not think that it could have been the intention of the executive order to have included tide-lands which were entirely separated and segregated from the uplands of the reservation. If it had been the intention to grant any special water privileges across the navigable water

upon which the reservation borders, fitting language would have been employed. A casual [18] reading of the executive order, together with a consideration of the mouth of Ebey Slough as fixed by the United States Government notes, however, is conclusive upon the plaintiff. The mere fact that the executive order in general terms, reads, 'southeasterly' with the line of low-water mark along said shore * * * of and across the mouth of Ebey Slough to the place of beginning" cannot be read to extend across the waters of Port Gardner, but must be carried to the mouth of Ebey Slough, even though the course may not be directly southeasterly to the point of commencement.

The motion to dismiss is granted.

JEREMIAH NETERER,

Judge.

[Endorsed]: Memorandum Decision. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 10, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [19]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corpo-
ration, and EVERETT IMPROVEMENT
COMPANY, a Corporation,

Defendants.

Judgment.

This cause came on regularly for trial on the 9th day of May, A. D. 1916, before the Honorable JEREMIAH NETERER, the Judge of the above-entitled court; the plaintiff appearing by its attorney Winter S. Martin, the Assistant United States Attorney for said District, and the defendants appearing by their attorney J. A. Coleman; and the plaintiff on the one hand and the defendants on the other hand having made certain stipulations as to the facts involved herein, and evidence having been adduced, and at the conclusion of the case the defendants moved for a dismissal thereof, upon the ground that it did not appear from the record herein that plaintiff is entitled to the possession of the property in controversy, but that on the other hand that it did appear from such record that the defendant Everett Improvement Company is the owner, and that it and

its tenant the Snohomish River Boom Company are entitled to the possession thereof. The Court after argument took said motion under advisement, and on the 10th day of May, A. D. 1916, rendered and filed a decision sustaining the contention of the defendants upon said motion; and now being in all things fully advised in the premises; it is considered, ordered and adjudged, that this cause be and the same is hereby dismissed. [20]

Dated this 15th day of May, A. D. 1916.

JEREMIAH NETERER,

Judge.

O. K.—WINTER S. MARTIN,

Asst. U. S. Atty.

[Endorsed]: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 15, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy. [21]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation,
and EVERETT IMPROVEMENT
COMPANY, a Corporation,

Defendants.

**Stipulation Extending Time for Preparing, etc., Bill
of Exceptions.**

The parties in the above-entitled cause by and through their respective counsel stipulate as follows, to wit: That the May term of the United States District Court for the Western District of Washington, Northern Division, A. D. 1916, may be extended by the court until and unto the 1st day of December, A. D. 1916, for the purposes of settling, allowing and filing a bill of exceptions in the above-entitled cause and that plaintiff be given the additional time mentioned, to wit, from the date hereof up to and including the 1st day of December, A. D. 1916, for the purpose of preparing, allowing, settling and filing its said bill of exceptions.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 2d day of November, 1916.

CLAY ALLEN and
WINTER S. MARTIN,
Attorneys for Plaintiff.
J. A. COLEMAN,
Attorney for Defendants.

[Endorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 2, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [22]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Cor-
poration, and EVERETT IMPROVEMENT
COMPANY, a Corporation,
Defendants.

**Order Extending Time to Prepare, etc., Bill of
Exceptions.**

This cause having come on to be heard upon the oral application of the United States Attorney for an order extending the May term of the United States District Court for the Western District of Washington, Northern Division, for the purposes of filing a bill of exceptions upon the stipulation of counsel in said cause, and the Court being duly advised, it is by the Court

Ordered and decreed that the May term, A. D. 1916, of the United States District Court for the Western District of Washington, Northern Division, be, and the same is, hereby extended up to and including the 1st day of December, 1916, in order to permit the plaintiff in the above-entitled cause to prepare, file, present and have allowed its bill of exceptions in said cause, and the plaintiff be, and it hereby is, given until the said 1st day of December, 1916, from the date hereof to prepare, file, present

and allow its said bill of exceptions in said cause.

Done in open court this 2d day of November, 1916.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Order. Filed in the U. S. District Court, Western District of Washington, Northern Division, Nov. 2, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [23]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,
Defendants.

**Order Further Extending May Term, 1916, of the
District Court.**

This cause coming on to be heard upon the motion and affidavit of Winter S. Martin, Assistant United States Attorney for the Western District of Washington, for an order extending the May term, 1916, of the above-entitled court for purposes of preparing, presenting, filing and having allowed plaintiff's bill of exceptions in said cause, and the Court being duly advised in the premises,

IT IS BY THE COURT ORDERED AND DECREED that the May term A. D. 1916, of the above-

entitled court be and the same hereby is extended from December 1, A. D. 1916, to and including January 15, A. D. 1917, and the time within which counsel for the plaintiff and plaintiff in error in the said cause may prepare, present, file and have its bill of exceptions allowed in said cause be, and the same hereby is, extended from said December 1, 1916, to and including January 15, 1917, all for the purpose of prosecuting plaintiff's writ of error in said cause.

Done in open court this 24th day of November, A. D. 1916.

JEREMIAH NETERER,
United States District Judge. [24]

[Endorsed]: Order Further Extending May Term, 1916, of the District Court. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 24, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [25]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the ninth day of

May, 1916, the above-entitled cause duly came on for trial before the Honorable JEREMIAH NETERER, Judge of the above-entitled court, jury having been waived by both parties. That upon said trial Messrs. Clay Allen, United States Attorney, and Winter S. Martin, Assistant United States Attorney, appeared for the plaintiff, and J. A. Coleman of Everett, Washington, appeared for the defendants. Thereupon the following proceedings were had: [26]

Mr. MARTIN.—This case, if your Honor please, is an action at law in which a jury trial was waived by both parties. The cause of action is one in ejectment to recover a certain triangular strip of land at the entrance to a certain body of water on the salt water of the Sound, known as Ebey Slough, on the Tulalip Indian Reservation in this State. The complaint is brought against two defendants, the Snohomish River Boom Company, a corporation, and the Everett Improvement Company, a corporation. The corporate capacity of the two defendants is admitted. The complainant seeks to recover this triangular strip of land, setting it out by metes and bounds, and the facts upon which the recovery is based are about as follows: In 1855 there was a treaty between the Indians and the white people at White Elliott known as the treaty of White Elliott, and the general purpose of that treaty was for the Indians to relinquish the lands in and about Puget Sound and to reserve to themselves certain tracts of land to their own use and to remain away from the whites, and the only language in the treaty which refers to

this reservation is as follows: In Article 3 they say, "There is also reserved from out of the lands hereby ceded the amount of thirty-six sections, or one township of land, on the northeast shore of Port Gardner, and north of the mouth of Snohomish River, including Tulalip Bay and the aforementioned Quilceda Creek."

That is the only language referring to the establishment of the Indian Reservation in and around Tulalip Bay a full township of thirty-six sections, generally [27] at the mouth of the Snohomish River, including Tulalip Bay and Quilceda Creek.

Following that proclamation, the President in December, 1873,—and these dates are material because there was a survey made before that,—in December, 1873, President Grant, by Presidential proclamation, in general language set aside this reservation which was made in the treaty, the language of which is, "It is hereby ordered that the boundaries of the Tulalip Indian Reservation, provided for in the third article of the treaty, shall be as follows: 'Beginning at low-water mark on the north shore of Steamboat Slough at a point where the section line between sections 32 and 33 of township 20 north, range 5 east, intersects the same; thence north on the line between sections 32 and 33, 28 and 29, 20 and 21, 16 and 17, 8 and 9, and 4 and 5, to the township line between townships 30 and 31; thence west on said township line to low-water mark on the shore of Port Susan; thence southeasterly with the line of low-water mark along said shore and the shores of Tulalip Bay and Port Gardner, with all the mean-

ders thereof, and across the mouth of Ebey Slough to the place of beginning.' "

And the whole controversy rests upon the proper construction of this Presidential proclamation. It says, "Beginning at low-water mark on Steamboat Slough." I have drawn a rough diagram so your Honor may follow me. Steamboat Slough is about at the edge of this (indicating on the diagram). Beginning at this point, at low-water mark on Steamboat Slough,—I will read [28] the description again and your Honor can follow me.

By a map that we will introduce it will be approximately there. That is north on the line between 20 and 21.

The COURT.—Those little squares you have, I presume, are 40-acre tracts.

Mr. MARTIN.—I have just run these to show the allotments. There is the low-water mark there. And that would be the north line of the Indian Reservation which goes out to the low-water mark at Port Susan. "Thence southeasterly with the line of low-water mark along the said shore line and the shores of Tulalip Bay and Port Gardner, with all the meanders thereof, and across the mouth of Ebey Slough to the place of beginning."

And the controversy arises from the construction of the language, of the words, "across the mouth of Ebey Slough to the place of beginning." The controversy is whether or not that line that follows Tulalip Bay and around the shores at low-water mark should be considered as going out into the Slough to approximately the point of the pointer here (indi-

cating), and then across the mouth at that point and down there, or whether the mouth would be broadly considered as containing a greater area so that the line may be said to run from this point here across the mouth of Ebey Slough to the point of beginning in a straight line. Now, I am not fully advised as to the area or acreage in that space, but there has grown up, and I believe there is constantly growing, certain tide lands which are slowly emerging from the water, and they have so emerged [29] so that a few years ago there was a triangular piece of land which should be inside of the line which we claim for the Reservation, our contention and theory being that the line of the Reservation follows the sinuosities of the shore and around to the mouth of Union Slough, and that that was the mouth, and then across there to the point of beginning; and the defendant contends that the line is up there, about where I have the pointer.

The defendant Snohomish River Boom Company bought certain tide lands from the State of Washington, a portion of which would lie within the line which we claim as the line of the Reservation, and the defendant Everett Improvement Company bought the land, that is right, is it not?

Mr. COLEMAN.—That is the predecessor in interest.

Mr. MARTIN.—The Snohomish River Boom Company bought the land and the Everett Improvement Company succeeded them in interest and then leased it so that one of them has a lease on it and the other owns it and they are both made parties defend-

ant. The area chalked in green is simply to represent approximately the tide land grant to the Everett Improvement Company which lies outside of the line of the Reservation. By metes and bounds there will be quite an area that is not in dispute, but a portion of the tide land granted by the State of Washington to the predecessor of the Everett Improvement Company and now owned by the Everett Improvement Company, and leased to the Boom Company, lies inside of what we claim to be the line of the Reservation.

Now those are the disputed facts and this action [30] is brought in ejectment to recover by metes and bounds that particular piece of land which lies inside that line. I have suggested to counsel, and I make the same suggestion to the Court, that while it is desirable in this action to recover the particular triangular strip of land in this controversy, if the Government is entitled to recover it, we would like if possible to have the further decree establishing that line as the south line of the reservation, and that of course raises the question of whether or not this court sitting as a law court of the United States would give us equitable relief in a law action, or whether another action would have to be brought if any action arose. As it now stands it is an action to recover that particular strip of land in ejectment, and I don't think there are any other parties interested in that strip, so that the judgment would be conclusive without any additional relief being sought. You would take that view, would you not?

Mr. COLEMAN.—I don't know if any others are

interested. I think it would be an entire change of the cause of action.

The COURT.—I think so, too.

Mr. MARTIN.—There is a stipulation, the parties have agreed, and there is only one portion of the stipulation in the language as drawn which we cannot agree upon. I thought this would be signed up, but there is some slight discrepancy. The first paragraph is—

The COURT.—Read the stipulation that you stipulate upon. I am not concerned with what you disagree upon. [31]

Mr. MARTIN.—The first paragraph is:

“That the plaintiff herein is the United States of America; that the defendants, Snohomish River Boom Company, is a corporation, duly organized and doing business under the laws of the State of Washington, and that the defendant, Everett Improvement Company, is a corporation, duly organized and doing business under the laws of the State of Washington.”

The second paragraph is: “The Court shall take into consideration as evidence and for all of the purposes of this suit, all treaties between the United States and any Indian tribe or tribes in so far as the same may be deemed material or relevant, and particularly, the treaty with the Duwamish and other tribes of Indians, of January 22, 1855.”

And the third paragraph is: “That on or about December 23, 1873, U. S. Grant, the then president of the United States, by an executive order, defined

and described the boundaries of the Tulalip Indian Reservation as follows:

‘Beginning at low-water mark on the north shore of Steamboat Slough at a point where the section line between sections 32 and 33 of township 30 north, range 5 east, intersects the same; thence north on the line between sections 32 and 33, 28 and 29, 20 and 21, 16 and 17, 8 and 9, and 4 and 5 to the township line between townships 30 and 31; thence west on said township line to low-water mark on the shore of Port Susan; thence southeasterly with the line of low-water mark along said shore and the shores of Tulalip Bay and Port Gardner, with all the meanders thereof, and across the mouth [32] Ebey’s Slough, to the place of beginning’;

—and that at the time of making said executive order, none of said land had theretofore been patented or conveyed by the United States to any one.”

Now in paragraph four here is the stipulation as drawn, that pursuant—

The COURT.—Is that the stipulation agreed upon?

Mr. MARTIN.—Paragraph four, we will agree upon in substance.

The COURT.—I am not concerned with what you do not agree upon.

Mr. MARTIN.—Your Honor will see what we mean by this paragraph. The paragraph as drawn is: “That pursuant to the laws of the United States, and by direction of its proper officers, the surveyor-general of the Territory of Washington, after the

making of the executive order aforesaid made a survey of the exterior lines of said reservation, as well as of the interior lines thereof, and made a map of said reservation; all of which was subsequently approved by the proper officials of the United States, and that a copy of the field-notes of said survey, in so far as they affect the southeastern boundary of said reservation, are hereto attached, marked exhibit 'A' and are hereby referred to, and by such reference made a part hereof; and that a copy of said map is hereto attached, marked exhibit 'B,' and is hereby referred to, and by such reference made a part hereof, and that said field-notes are platted on exhibit 'C' hereto attached; which last named exhibit also shows the land conveyed by the State of Washington to the Everett Land Company and the tract in dispute [33] herein."

Now, we expect by witnesses to show that this order was made in December, 1873. That in August of that year the contract was let for this survey and the actual work commenced, and that it proceeded from time to time to establish these several lines until the survey of these lines around Ebey Slough was concluded sometime in the following May, but it is not literally true, as stated, that after the making of the executive order as aforesaid the Government made a survey of the aforesaid lines, because it was commenced before the proclamation was made, "and made a map of said reservation; all of which was subsequently approved by the proper officials of the United States." It is true a map was made and it is literally a map of the reservation, but some of the

boundaries do not, as I purpose to show, follow the language of the actual boundaries of the Presidential proclamation. "And that a copy of the field-notes are hereby attached and marked exhibit 'A,' and that a copy of said map is attached and marked exhibit 'B.' "

I thought that in going over the map with Mr. Coleman that the field-notes, of which we have a duly exemplified copy of the lines in and around Ebey Slough, that these field-notes were part of this survey, and that this survey was literally made upon the executive order and that by further departmental order the survey was made to conform to the proclamation, but that we find is not the fact. The Government in this particular expects to show by the surveyor-general of the United States that the only map of the reservation, the only [34] survey which was made down to 1902 or 1903, ran out to that point on Port Susan, at the point of high-water mark, and that there was being surveyed a meander line, and following the sinuosities of the shore, which meander line had the effect of following the upland portion of the Reservation, and may be treated as such, and that these meanders follow around in Ebey Slough to where the actual east line of the Reservation is, and that we have a map platted of the field-notes of that meander line, but those field-notes are the field-notes of the meander line which do not conform to the Reservation line itself, and we expect to show that that line never did attempt to establish the line of the Reservation out on the line of low-water, and upon that admission I think all the facts are be-

fore the Court and the Court will understand the relative value of these field-notes and the draft which was made. This plat I have here, there is the actual line in question (indicating on the diagram), and that triangular strip of land is what we claim lies within the Reservation line. If the Reservation line is construed to mean down to that point, I don't know the section number, but where I have my finger, and thence directly across, or whether it follows the sinuosities of the shore, I don't know. But with that explanation we can admit that these field-notes which we have are the actual field-notes of the meander which was made at the time, and that they have the purpose of showing the boundaries of the Reservation to the high water mark, but not to the line of low-water mark, which is the language of the Presidential proclamation, and we will admit the facts [35] shown by the field-notes as to the area in question. I should suggest here that the defendants assert their title to the land in question based upon the deed from the State of Washington claiming that the same was free from any act of the United States. Paragraph five reads:

“That the property described in paragraph I of the affirmative defense set forth in the answer of the defendants, was on February 4, 1893, deeded by the State of Washington, to the Everett Land Company, and later on, by the Everett Land Company, by mesne conveyance to the defendant, Everett Improvement Company, and that the said Everett Improvement Company has leased a portion thereof to the defendant, the Snohomish River Boom Com-

pany; that the United States has never patented or undertaken to convey to anyone, any portion of said lands, but the sole claim of the plaintiff herein is that a portion of said lands lies within the boundaries of the Tulalip Indian Reservation; that said lands constitute a tide flat, which is daily covered and uncovered by the ebb and flow of the tide, and that there is and at all times has been a deep water channel sufficient for the passage of steam boats and other water craft, lying between said tide flat and the main or upland of said Indian Reservation." It is true and it is admitted that there is a deep water channel following the line of the shore, and the channel of Ebey Slough goes around in that slough and I think there is some channel in there, isn't there, Mr. Coleman?

Mr. COLEMAN.—No, the channel follows the other line.

The COURT.—How deep is that channel? [36]

Mr. COLEMAN.—It is deep enough for any steamboat that goes up the Snohomish River.

Mr. MARTIN.—As to that part that goes over near Steamboat Slough there is a small channel in there, is there, Mr. Coleman?

Mr. COLEMAN.—Steamboat Slough is to the right.

Mr. MARTIN.—Is there any channel in Ebey Slough?

Mr. COLEMAN.—No, there is no channel. They both empty into Port Gardner Bay. I will show you another map later. [37]

Testimony of E. A. Fitz-Henry, for the Government.

E. A. FITZ-HENRY, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. MARTIN.)

Q. Mr. Fitz-Henry, you are the Surveyor-General of the United States for the State of Washington?

A. Yes, sir.

Q. Mr. Fitz-Henry, what is your profession?

A. Civil engineer and surveyor.

Q. How long have you been acting as such and practicing your profession?

A. Twenty-six years.

Q. You were formerly located at Port Angeles before your connection with the Government?

A. Yes, sir.

Q. Mr. Fitz-Henry, you are the custodian of the records of the public land surveys of the State of Washington, are you not? A. Yes, sir.

Q. And your office is located at Olympia?

A. Yes, sir.

Q. Have you brought the records which relate to the Tulalip Indian Reservation?

A. Yes, I brought all the official records.

Q. Now, will you turn to the maps and books you brought with you Mr. Fitz-Henry, and tell us when the first survey was made of the Tulalip Indian Reservation.

A. I will have to refer to the records.

(Testimony of E. A. Fitz-Henry.)

Q. Yes, as shown by your records. [38]

A. The records are dated according to each day's work in the field, and of course they will cover a period of several months. Now, any particular portion of the field-notes that you want?

Q. Well, when was the survey work first commenced? A. The 6th day of August, 1873.

Q. And continued until when approximately?

A. May 22, 1874.

Q. Do you know and have you examined the records to ascertain whether this survey which was actually made followed the call of the Presidential proclamation establishing the Reservation?

A. The east and north boundary was surveyed and monumented according to the proclamation, but that portion of the boundary line bordering on the Sound or the salt water was never monumented. The meander line was surveyed along mean high-water line for the purpose of ascertaining the area of the fractional lots bordering on the salt water.

Q. Have you a map of the Reservation, showing the surveys? A. Yes, I have three maps here.

Q. First give me the official map of the Reservation, the complete map. A. Yes, this is it.

Q. See if those two maps are the same.

A. Yes, one is an exemplified copy of the original. This is the original, and this is an exemplified copy.

Mr. MARTIN.—We will offer the exemplified copy of the original as Plaintiff's Exhibit No. 1.

Mr. COLEMAN.—I think there is a mark on that

(Testimony of E. A. Fitz-Henry.)

where we were [39] going to attach it to the stipulation.

Mr. MARTIN.—Yes; that should be stricken out.

(Map is admitted in evidence and marked Plaintiff's Exhibit No. 1.)

Q. (Mr. MARTIN.) Now, what other maps have you?

A. I have a supplemental map showing the Indian allotments, a portion of the north and east boundary, and the meander of the mean high tide along the beach.

Q. When was that map made?

A. This was made June 24th, 1874, and then I have a supplemental map showing the boundaries of the Indian Agency and the land attached to the agency.

Q. And when was that one made?

A. It was surveyed in December, 1902, and surveyed by H. V. Kingsbury, surveyor-general, April 1st, 1904.

Q. Now, referring to the survey of 1874, does that in any way attempt to locate the south and west line of the Reservation along salt water?

A. No, sir. That survey, according to the proclamation, or the boundary line according to the proclamation, was never made or attempted to be made. The only survey along the water front was made to determine the area of the fractional lots.

Q. And this survey relates entirely to the upland portion of the Reservation inside of the line.

A. Yes, sir.

Q. And to mark out the Indian allotments.

(Testimony of E. A. Fitz-Henry.)

A. Yes, sir.

Q. And the survey of 1903 and 1904, you refer to the lines of the Reservation there.

A. That refers to the agency on Tulalip Bay and the north [40] and east boundary which was monumented. There has never been any attempt on the part of the Government to monument the boundary along the water front.

Q. So that the surveys of 1903 and 1904 re-set, and re-establish the east and north line of the Reservation. A. Yes, sir.

Q. And no effort was made to outline the land below the high-water mark or to change the meander line originally made? A. No, sir.

Mr. COLEMAN.—These do not vary the original map in any way? A. No, sir.

Mr. COLEMAN.—I think they are immaterial.

Mr. MARTIN.—Q. Mr. Fitz-Henry, have there been any other surveys excepting the three you have testified to?

A. No, those are the only surveys that have been made. That is what my office records show.

Q. And in the surveys thus made only one of them, the original survey, had anything to do with the meander line.

A. The original survey surveyed the meanders of the mean high-water line along the waterfront.

Q. How do you explain the fact that the meander line of the first survey followed the sinuosities of the shore of Ebey Slough away up inside the mouth and beyond the mouth?

(Testimony of E. A. Fitz-Henry.)

A. That meander line was run to determine the area of the upland portion of the Reservation and to separate the water survey from the land survey.

Q. And without regard to the actual call of the Reservation. A. No, sir. [41]

Q. Mr. Fitz-Henry, where would the line in your judgment, following the call of the Reservation, where would that line be?

Mr. COLEMAN.—We object to that as calling for a conclusion.

The COURT.—I don't see that that can help you any.

Mr. MARTIN.—Well, that is a matter of law. I think it is proper for an expert to give his opinion as to where the line of the Reservation would be, following the call.

The COURT.—Do you mean the line at low-water mark?

Mr. MARTIN.—Where the line of the Reservation would be. It has never been put in.

The COURT.—He may state where he believes the line of low-water mark would be.

Q. (Mr. MARTIN.) Just outline it, Mr. Fitz-Henry.

A. It would be impossible to follow the survey all the way around here. To determine the low-water line would require a system of soundings and markings by buoys. You would have to survey along the high-water line. Otherwise it would take a year or more to determine that and mark it at low-water, so there has been no attempt on the part of the Govern-

(Testimony of E. A. Fitz-Henry.)

ment to monument the low-water line.

Q. And is that true generally of the public land surveys in your jurisdiction?

A. In the public land surveys within my jurisdiction we only attempt to survey the uplands and not the tide-lands.

Q. The surveys made by your office are along the line of mean high water? [42]

A. Yes, sir, the meander line was of the mean high water; that we have was made for determining the area of the upland portion of the Reservation for allotment purposes.

Q. So this line at the intersection of the township line at Port Susan, and thence along the shores southeasterly, and following up into Tulalip Bay and Ebey Slough, does that line, that meander line as actually surveyed, in your judgment represent the boundaries of the Tulalip Indian Reservation?

Mr. COLEMAN.—We object to that as calling for a conclusion.

The COURT.—The objection is sustained.

Q. Well, was there any attempt, as a matter of fact, to follow the Presidential proclamation in placing that line, that meander line, on that survey?

Mr. COLEMAN.—We object to that for the reason that it calls for a conclusion and is irrelevant and immaterial. The witness has testified what line was actually run, and the proclamation speaks for itself.

The COURT.—I don't think the witness can help us any by his conclusions.

Q. What reference is made to the mouth of Ebey

(Testimony of E. A. Fitz-Henry.)

Slough in the field-notes?

A. In meandering the mean high-water line there is a little designation by the surveyor where the mouth of Ebey Slough is.

Q. What is that designation?

A. It was monumented, 7.71 chains north of the half section corner, and thence,—I cannot read this—

The COURT.—Is that included in this map here? Can you [43] indicate where that would be?

A. No.

Mr. COLEMAN.—We have a map on which that point is platted.

Q. (Mr. MARTIN.) Will you find that in the certified copy of the field-notes which you have given us. What is that reference to the mouth of Ebey Slough. Turn to the certified field-notes.

A. I will have to look these all over to find it.

Mr. COLEMAN.—Allow me to look, Mr. Fitz-Henry. I think I can call your attention to it. I can probably find it. See if this is not the same. It will save time and this is the map introduced.

A. Yes, sir, it is just the same as the official record.

Mr. MARTIN.—What do you wish to call our attention to in that?

A. It designates the mouth of Ebey Slough, and following a certain distance, then it says, “North 85 degrees east, 18 chains, to the mouth of Ebey Slough. Thence south $85\frac{1}{2}$ degrees east, to telegraph line; thence north 51 degrees east, 15.51 chains, to the

(Testimony of E. A. Fitz-Henry.)

meander corner on the line through the center of Section 32."

Q. Will you take this map and mark those two courses and distances where the surveyor goes beyond the mouth of Ebey Slough.

A. He continues on up across the Reservation to meander that line. That is the course right there (indicating on the map), and that is the point right there.

Q. The language on the plat, "Mouth of Ebey Slough according to meander notes of United States Government," that is the point? [44]

A. Yes, sir; that is the point right there.

Q. Which way did the surveyor go then?

A. He was going this way. He went on this way around like that (indicating).

Mr. COLEMAN.—The court cannot see that. This map ought to be in evidence.

Mr. MARTIN.—We will offer this in evidence.

(The same is admitted and marked Plaintiff's Exhibit No. 2.)

The COURT.—What do you call that? That is the survey of 1874?

Mr. MARTIN.—No. Those are both eliminated.

Mr. COLEMAN.—This is a map upon which the field-notes which ought to be introduced in evidence to make it clear are platted. It is just to illustrate the field-notes.

Mr. MARTIN.—We will offer the field-notes in evidence as exhibit No. 3.

(Testimony of E. A. Fitz-Henry.)

The COURT.—And this is exhibit No. 2, you say?

Mr. MARTIN.—Yes, exhibit No. 2 is on the board and we will offer the certified copy of the field-notes, the exemplified copy.

(The same are admitted and marked Plaintiff's Exhibit No. 3.)

Mr. COLEMAN.—This exhibit No. 3 shows the field-notes; platted, and also shows the tide-land area deeded by the State of Washington to the predecessors in interest of the defendants.

A. The meander line, the mean high-water line, it meanders up like that and across like that, and then over to that point and then meanders down there, and meanders to that point, and at that place in the notes the surveyor [45] set the mouth of Ebey Slough; then meanders around here.

Q. And that meander of Ebey Slough does not pretend to conform to the low-water line or at any point along the shore. A. No.

Q. Is there any reference other than you have already mentioned as to the location of the mouth of Ebey Slough in the surveys?

A. No, there has never been any monument. There is no place designated by a monument as Ebey Slough.

Cross-examination.

(By Mr. COLEMAN.)

Q. Now, the southernmost point of the reservation is here. A. Yes, sir.

Q. And the point of beginning of the proclamation is here on Steamboat Slough. A. Yes, sir.

(Testimony of E. A. Fitz-Henry.)

Q. The contention of the Government is that the boundaries of the Reservation run in a straight line to this point, is that right, Mr. Martin?

Mr. MARTIN.—Yes, at the line of low-water mark and then over to that point.

Mr. COLEMAN.—In a straight line.

Mr. MARTIN.—Yes, on a straight line from the low-water mark there to the low-water mark here.

Mr. COLEMAN.—Your Honor asked about the channel of Steamboat Slough. The channel of Steamboat Slough runs down here, and the channel of Ebey Slough runs down here, [46] and the deep water is down here. That is the main channel of the river. I might state that the Snohomish River has four mouths and the Ebey Slough is one of them. Now Ebey Slough and Steamboat Slough, the water finally comes down here and that is between the tide-lands which are represented by this green area and the reservation line here.

The COURT.—I think you had better get a copy of this.

Mr. MARTIN.—We have an exemplified copy of this.

The COURT.—Very well. That is the exhibit instead of the original?

Mr. MARTIN.—Yes.

The COURT.—Very well, proceed.

Mr. MARTIN.—I think we can further admit in this case that the triangular strip of land, which is the subject of this suit, has been as long as memory of

man goes—it has been, that land formed by the junction of these several waters, has been in existence so long that the memory of man runneth not to the contrary. As long as the oldest inhabitant knows anything about it it was there, and presumably was there at the time the survey was made. It is possible that the silt has added to that area and that the water area is perhaps lessening slowly.

The COURT.—Is there deep water all over that tract of land?

Mr. COLEMAN.—No, your Honor. Let me explain that. This is upland across here. (Indicating on the diagram.) Now this blue line bounds the tidelands which are covered and uncovered daily by the tide. Now there is no water here. This is Smith Island. This is Steamboat [47] Slough, it is one of the branches of Snohomish River and comes down here and takes its course this way.

The COURT.—That is navigable?

Mr. COLEMAN.—Yes, that is navigable, and Ebey Slough is also navigable and comes down this way.

The COURT.—Is that navigable? (Pointing on the map.)

Mr. COLEMAN.—Yes, that is navigable, and this is attached to Smith Island, and in 1893 was surveyed by the Board of Harbor Commissioners of the State of Washington.

Mr. MARTIN.—And for your Honor's information that land also, that particular piece of land was afterwards the subject of a controversy in the Jones-Calvert case.

Mr. COLEMAN.—Oh, no, you are mistaken about that. This land here is clearly upland, and a man named Jones claiming that this land was tide-land undertook to tell Mr. Calvert when he was land commissioner that it was tide-land, and the State of Washington took the position that it was not tide-land, and it was admitted that it was within the bounds of the Indian Reservation. The trial court found it was tide-land, and because it was tide-land did not pass to the Indians, and therefore was within the State of Washington. The Supreme Court of the State decided it was clearly within the lines of the reservation and did not pass to the State, but that is this land here.

Mr. MARTIN.—The Jones land was an allotment and he claimed the right to purchase tide-lands lying in front of that, and the State Supreme Court said that the tide-land in front of that land had been particularly disclaimed, and inasmuch as that had been done, they were entitled to [48] treat the lands in there as part of the Indian Reservation.

Mr. COLEMAN.—Well, this is the channel of Steamboat Slough here. Have you any other evidence?

Mr. MARTIN.—No.

Mr. COLEMAN.—I think that most of the matters involved in here are matters of which your Honor is required to take judicial notice, etc.

(Argument by counsel here followed.)

Mr. MARTIN.—Pardon me a moment. Before you consider the Government's case as closed, it is

clear, your Honor, that this triangular piece of land is in the possession of the defendant.

Mr. COLEMAN.—Well, that is admitted in the pleadings.

Mr. MARTIN.—And that it is by metes and bounds as designated on the plat, that that is the land in question, and that you have the land.

Mr. COLEMAN.—There is this difficulty. It is admitted that triangle is a picture of the land, but whether or not the description could be tied to anything and described by your Honor I don't know.

Mr. MARTIN.—This being an action in ejectment the Government must recover possession of something actual.

The COURT.—*That* is no use in arguing that. We all know that.

Mr. COLEMAN.—The defendants and each of them move to dismiss this case for the reason that the plaintiff has not shown it is entitled to the possession of the land in controversy or the property in controversy, or to any part of it. And for the further reason that it [49] affirmatively appears that said property in controversy belongs to the defendant Everett Improvement Company, and is occupied by the Snohomish River Boom Company as tenant of the Everett Improvement Company. This case is peculiar in this, that I am satisfied that under the law your Honor is supposed to take judicial notice of the actual facts in here and the only aid that counsel could be to you is to inform you of what are established geographical facts. This matter was very

peculiarly treated by the Government. So far as I know,—

(Argument of counsel continued.)

Mr. MARTIN.—Have you any evidence to offer?

Mr. COLEMAN.—No.

Mr. MARTIN.—Counsel has moved to dismiss, and what you have said goes to the entire merits of the case.

Mr. COLEMAN.—Yes.

Mr. MARTIN.—There are one or two points to reply to.

(Argument followed.)

The COURT.—Where is that proclamation found, in what volume of the statute is this proclamation found?

Mr. MARTIN.—The treaty is found in 12 statutes at large, 927, and the executive order establishing the reservation is—

Mr. COLEMAN.—The language of the order is set out in the complaint, your Honor.

The COURT.—And what is the date of that?

Mr. MARTIN.—December 23d, 1873, but I can leave our two volumes here with the Court. Here is the Jones-Carver case that I borrowed from your Honor's library, and the two volumes which contain the treaty and the proclamation. [50]

The COURT.—Let me have the exhibits and the official map. I think I will take this under advisement.

Mr. MARTIN.—Will your Honor desire us to introduce that stipulation? There was one paragraph

we had in there; it is practically all admitted.

The COURT.—Oh, no, that is not necessary.

Mr. MARTIN.—There is another map.

Mr. COLEMAN.—That is identical with the official map introduced. I have no objection to introducing as many as possible, but I want the private marks on them disregarded. I don't know why he wants to introduce it because it is identical with the map already introduced and that matter written on it and colored on it is extraneous.

(The Court then delivered the following decision.)

The United States seeks to recover from the defendants the possession of certain tide-lands situated at Port Gardner, Snohomish County, Washington. The land was sold by the State of Washington to the Everett Improvement Company as tide-lands, and was by the Improvement Company leased to the Boom Company. The issue involves the construction of executive order of December 23, 1873, and the Indian treaty of 1855. Section 2 of the treaty provides, among other things, "That the amount of two sections of 1280 acres, on the north side of Hwoh-whomish and the creek emptying into the same called Kwilt-Cedar, the peninsula at the southeastern end of Perry Island * * * all of which tract shall be set apart and so far as necessary surveyed and marked out for their [51] exclusive use * * *," and further that "there is also reserved throughout the lands hereby ceded the amount of thirty-six sections or one township of land on the northeastern shore of Port Gardner and north of the mouth of Snohomish River, including Tulalip Bay and the be-

fore mentioned Kwilt-Cedar Creek * * * ,” and Article 4, “The said tribes and bands agree to remove to and settle upon the said first above-mentioned reservations within one year after the ratification of this treaty, or sooner, if the means are furnished them. * * * ” Article 5, “The right of taking fish at usual and accustomed grounds and stations is further secured to the Indians * * * ”

President Grant, December 23, 1873, by executive order, fixed the boundaries of the Tulalip Indian Reservation pursuant to the treaty, as follows: “Beginning at low-water mark on the north shore of Steamboat Slough at a point where the section line between sections thirty-two and thirty-three of township twenty north, range five east, intersects the same; thence north * * * thence west * * * to low-water mark on the shore of Port Susan; thence southeasterly with the line of low-water mark along said shore to the shores of Tulalip Bay and Port Gardner with all the meanderings thereof, and across the mouth of Ebey’s Slough to the place of beginning. The following sketch exhibits the land: (Sketch included.)

It is contended by the plaintiff that the meander line along the shore should extend from the most southerly point of the reservation (Priest Point) across the channel to Steamboat Slough, which would include [52] the wedge shaped tide-lands colored black on the sketch; whereas the defendants contend that the boundary follows low-water mark along the channel to the mouth of Ebey’s Slough, which, it is

contended, is above the lands in question, and thence to the point of beginning. At the conclusion of the evidence defendant moved to dismiss.

According to the meander notes U. S. Government, the mouth of Ebey's Slough is practically at X indicated upon the sketch. The testimony shows that the land in question is a part of the tide-lands which extend from and adhere to Smith Island; that these lands are separated by a deep-water channel on the west and north and are independent of the reservation; that Steamboat Slough, which is navigable, is north of the land, and the water of Port Gardner is west and form a navigable channel between the reservation and the land in question entering into Ebey Slough. I think it must be apparent from an examination of the treaty and likewise of the executive order, that the purpose was to grant to the Indians tillable land with such accretions as would naturally belong thereto. I do not think that it could have been the intention of the executive order to have included tide-lands which are entirely separated and segregated from the uplands of the reservation. If it had been the intention to grant any special water privileges across the navigable water upon which the reservation borders, fitting language would have been employed. A casual reading of the executive order, together with a consideration of the mouth of Ebey Slough [53] as fixed by the United States Government notes, however, is conclusive upon the plaintiff. The mere fact that the executive order in general terms, reads, "southeasterly with the line of low-

water mark along said shore * * * of and across the mouth of Ebey Slough to the place of beginning'' cannot be read to extend across the waters of Port Gardner, but must be carried to the mouth of Ebey Slough, even though the course may not be directly southeasterly to the point of commencement.

The motion to dismiss is granted.

To which ruling of the Court the plaintiff excepts and its exception is allowed.

That the exhibits referred to in the foregoing transcript as Plaintiff's Exhibits I, II, and III, are hereto attached, so marked and incorporated herein by reference.

CLAY ALLEN,
United States Attorney,
WINTER S. MARTIN,
Assistant United States Attorney,
For Plaintiff.

Stipulation Re Bill of Exceptions.

It is stipulated that the foregoing bill of exceptions is correct in all respects and as such may be by the Court approved, allowed and settled as the bill of exceptions in said cause and as such may be filed in said cause and made a part of the record herein, reserving the right to file supplementary bills in the event same may be required. [54]

CLAY ALLEN,
WINTER S. MARTIN,
Attorneys for Plaintiff.
J. A. COLEMAN,
Attorney for Defendants.

Order Approving Bill of Exceptions.

The foregoing bill of exceptions is correct in all respects and is hereby approved, allowed and settled and signed, and may be a part of the record herein.

Done in open court this 8th day of January, 1917.

JEREMIAH NETERER,
United States District Judge.

[Endorsed]: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 8, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [55]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469—AT LAW.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,

Defendants.

Petition for Writ of Error.

Now comes the United States of America by Clay Allen, United States Attorney for the Western District of Washington, and respectfully shows that on the 15th day of May, A. D. 1916, this Court entered judgment of dismissal in the above-entitled cause in favor of the defendants and against this plaintiff, in

which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE this plaintiff prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the ninth circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

CLAY ALLEN,

United States Attorney.

WINTER S. MARTIN,

Assistant United States Attorney. [56]

[Endorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 10, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [57]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469—AT LAW.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,

Defendants.

Assignment of Errors.

Now comes the plaintiff, the United States of America, and assigns error in the decision of the said District Court as follows:

I.

The Court erred in granting the motion of defendants for a dismissal of said cause for the reason that judgment should have been rendered for the plaintiff upon all the evidence in the cause.

II.

The Court erred in holding that the lands described in the complaint title and possession to which were sought in the present action were not a part of the Tulalip Indian Reservation.

III.

The Court erred in holding that the mouth of Ebey Slough as determined and fixed by the United States [58] engineers in the course of the reservation survey controlled and fixed the mouth of said Ebey Slough.

IV.

The Court erred in holding that the lands in question was tideland which was not a part of the Indian reservation.

V.

The Court erred in not entering judgment in favor of the plaintiff upon all the evidence in the case according to the prayer of the complaint.

VI.

The Court erred in dismissing said cause.

WHEREFORE the United States of America prays that the judgment of the said court be reversed and this cause remanded to the said District Court, with directions to grant a new trial or to enter judgment in favor of the plaintiff in said cause.

CLAY ALLEN,

United States Attorney.

WINTER S. MARTIN,

Assistant United States Attorney.

Filed this 10th day of November, 1916.

Clerk of the United States District Court for the
Western District of Washington, Northern
Division. [59]

[Endorsed]: Assignment of Errors. Filed in the
U. S. District Court, Western Dist. of Washington,
Northern Division. Nov. 10, 1916. Frank L. Crosby,
Clerk. By Ed M. Lakin, Deputy. [60]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2469—AT LAW.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,

Defendants.

Order Allowing Writ of Error.

This 10th day of November, A. D. 1916, came the plaintiff by Clay Allen, United States Attorney for the Western District of Washington, and filed herein and presented to the Court his petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the ninth judicial circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error without bond.

JEREMIAH NETERER,

United States District Judge, for the Western Dis-
trict of Washington, Northern Division.

[Endorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 10, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [61]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,

Defendants.

**Order Directing Transmission of Original Exhibits
to Appellate Court.**

Now on this 9th day of January, 1917, upon motion of Clay Allen, United States Attorney, and for sufficient cause appearing, it is ordered that the Plaintiff's Original Exhibits Nos. 1, 2 and 3, filed and introduced as evidence upon the trial of this cause, be by the clerk of this court forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, there to be inspected and considered, together with the transcript of the record on appeal in this cause.

JEREMIAH NETERER,
District Judge.

[Endorsed]: Order to Transmit Original Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 9, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [62]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,

Defendants.

**Order Extending Time to and Including February
10, 1917, to Prepare, etc., Transcript of Record.**

Now on this 5th day of December, 1916, upon motion of proctor for plaintiff and for sufficient cause appearing, it is ordered that the time within which the clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 10th day of February, 1917.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Order Extending Time to Send Transcript to Circuit Court of Appeals. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 5, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [63]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,

Defendants.

**Order Extending Time to and Including April 1,
1917, to Prepare, etc., Transcript of Record.**

Now, on this 8th day of February, 1917, upon motion of proctor for plaintiff and for sufficient cause appearing, it is ordered that the time within which the clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 1st day of April, 1917.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Order Extending Time to Send Transcript to Circuit Court of Appeals. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 8, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [64]

In the United States Circuit Court of Appeals, Ninth Circuit.

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,

Defendants in Error.

Writ of Error (Copy).

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America: To the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between the United States of America, as plaintiff and Snohomish River Boom Company, a corporation, and Everett Improvement Company, a corporation, as defendants, a manifest error hath happened, to the

great damage of the said United States of America, plaintiff, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things [65] concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, where said court is sitting in said circuit within thirty days from the date hereof, to wit, the — day of December, A. D. 1916, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States of America, this 10th day of November, 1916.

[Seal] FRANK L. CROSBY,
Clerk of the United States District Court for the
Western District of Washington, Northern Division.

Allowed this 10th day of November, 1916.

JEREMIAH NETERER,
Judge of the District Court of the United States, for
the Western District of Washington, Northern
Division.

Received a copy of the within Writ of Error this 14th day of Nov., 1916.

J. A. COLEMAN,
Attorney for Defendant. [66]

[Endorsed]: No. 2469. In the Circuit Court of the United States, for the Ninth Circuit. United States of America, Plaintiff in Error, v. Snohomish River Boom Company, a Corporation, et al., Defendants in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 10, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.[67]

In the United States Circuit Court of Appeals, Ninth Circuit.

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,
Defendants in Error.

Citation on Writ of Error (Copy).

United States of America,
Ninth Judicial Circuit,—ss.

To Snohomish River Boom Company, a Corporation,
and Everett Improvement Company, a Corporation,
GREETINGS:

You are hereby cited and admonished to be and

appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within thirty (30) days from the date hereof, to wit, on the 10th day of December, A. D. 1916, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein United States of America is plaintiff in error, and the Snohomish River Boom Company, a corporation, and Everett Improvement Company, a corporation, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf. [68]

WITNESS the Honorable JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, Northern Division, this 10th day of November, 1916.

JEREMIAH NETERER,
United States District Judge.

Received a copy of the within Citation this 14th day of Nov., 1916.

J. A. COLEMAN,
Attorney for Defendant.

[Endorsed]: No. 2469. In the Circuit Court of the United States for the Ninth Circuit. United States of America, Plaintiff in Error, v. Snohomish River Boom Company, a corporation, et al., Defendants in Error. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of

Washington, Northern Division, Nov. 10, 1916.
Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.
[69]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY, a Corp.,
and EVERETT IMPROVEMENT CO.,

Defendants.

Praeipice for Transcript of Record.

To the Clerk of the Above-Entitled Court:

You will please prepare record for purposes of Writ of Error in the Circuit Court of Appeals for the Ninth Circuit and include therein the following, to wit: Complaint, Summons, Marshal's Return of Service; Answer; Opinion of Court; Judgment; Stipulation Extending Time to File Bill of Exceptions; Order Extending Time to File Bill of Exceptions; Order Further Extending Time to File Bill of Exceptions; Bill of Exceptions; Order Allowing Same; Petition for Writ of Error; Assignment of Errors; Order Allowing Writ of Error; Citation in Error; Writ of Error; Order Transmitting Original

Exhibits; Orders Extending Time to File Transcript of Record.

CLAY ALLEN and
WINTER S. MARTIN,
United States Attorney and Asst. U. S. Atty,
For Plaintiff.

[Endorsed]: Praeceptum. Filed in the U. S. District Court, Western District of Washington, Northern Division. Mar. 26, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [70]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,
Defendants.

**Certificate of Clerk U. S. District Court to
Transcript of Record, etc.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 70 typewritten pages, numbered from 1 to 70, inclusive, to be a full, true and correct copy of the record and

proceedings in the above and foregoing entitled cause and the entire record as the same remain of record and on file in the office of the clerk of said court, save and excepting Plaintiff's Exhibits Nos. 1, 2 and 3, separately certified of even date herewith, and transmitted to the Circuit Court of Appeals, there to be inspected and considered, together with the record upon appeal in this cause—said exhibits being transmitted pursuant to the order of the District Court made in the said cause January 9, 1917, and that the same constitutes the record on appeal from the Judgment of the District Court of the United States, for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit. [71]

I further certify that I hereto attach and herewith transmit the original Citation and Writ of Error issued in this cause.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. R. S.) for	
making record, certificate or re-	
turn, 155 folios at 15c.....	\$ 23.25
Certificate of Clerk to transcript of	
record—4 folios at 15c.....	.60

<i>Snohomish River Boom Company et al.</i>	71
Seal to said Certificate.....	.20
Certificate of Clerk to original exhibits, 3 folios at 15c.....	.45
Seal to said Certificate.....	.20
<hr/>	
Total.....\$	24.70

I hereby certify that the above cost for preparing and certifying record amounting to \$24.70, chargeable to the United States, will be included in my account against the United States for Clerk's fees for the quarter ending March 31, 1917.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 27th day of March, 1917.

[Seal]

FRANK L. CROSBY,
United States District Clerk. [72]

In the United States Circuit Court of Appeals, Ninth Circuit.

No. 2469.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

SNOHOMISH RIVER BOOM COMPANY,
a Corporation, and EVERETT IMPROVE-
MENT COMPANY, a Corporation,
Defendants in Error.

Citation on Writ of Error (Original).

United States of America,
Ninth Judicial Circuit,—ss.

To Snohomish River Boom Company, a Corporation,
and Everett Improvement Company, a Corporation, GREETINGS:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, State of California, within thirty (30) days from the date hereof, to wit, on the 10th day of December, A. D. 1916, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein United States of America is plaintiff in error, and the Snohomish River Boom Company, a Corporation, and Everett Improvement Company, a Corporation, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf. [73]

WITNESS the Honorable JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, Northern Division, this 10th day of November, 1916.

JEREMIAH NETERER,
United States District Judge. [74]

[Endorsed]: No. 2469. In the Circuit Court of the United States for the Ninth Circuit. United States of America, Plaintiff in Error, v. Snohomish River Boom Company, a Corporation, et al., Defendants in Error. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 10, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

Received a copy of the within Citation this 14th day of Nov., 1916.

J. A. COLEMAN,
Attorney for Defendant. [75]

In the United States Circuit Court of Appeals, Ninth Circuit.

No. 2469.

UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.

SNOHOMISH RIVER BOOM COMPANY, a Corporation, and EVERETT IMPROVEMENT COMPANY, a Corporation,
Defendants in Error.

Writ of Error (Original).

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America: To the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division:

Because in the record and proceedings, as also in

the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between the United States of America, as plaintiff and Snohomish River Boom Company, a corporation, and Everett Improvement Company, a corporation, as defendants, a manifest error hath happened, to the great damage of the said United States of America, plaintiff, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things [76] concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, where said Court is sitting in said circuit within thirty days from the date hereof, to wit, the —— day of December, A. D. 1916, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States of America, this 10th day of November, 1916.

[Seal] FRANK L. CROSBY,
Clerk of the United States District Court for the
Western District of Washington, Northern
Division.

Allowed this 10th day of November, 1916.

JEREMIAH NETERER,
Judge of the District Court of the United States, for
the Western District of Washington, Northern
Division. [77]

[Endorsed]: No. 2469. In the Circuit Court of
the United States for the Ninth Circuit. United
States of America, Plaintiff in Error, vs. Snohomish
River Boom Company, a Corporation, et al., Defend-
ants in Error. Writ of Error. Filed in the U. S.
District Court, Western Dist. of Washington, North-
ern Division. Nov. 10, 1916. Frank L. Crosby, Clerk.
By Ed M. Lakin, Deputy.

Received a copy of the within Writ of Error this
14th day of Nov., 1916.

J. A. COLEMAN,
Attorney for Defendant. [78]

[Endorsed]: No. 2962. United States Circuit
Court of Appeals for the Ninth Circuit. The United
States of America, Plaintiff in Error, vs. Snohomish
River Boom Company, a Corporation, and Everett
Improvement Company, a Corporation, Defendants

in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed March 30, 1917.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.